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U.S. DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEEIN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

FRIENDS OF THE EARTH, INC.

and

DEAN R. REED,

Plaintiffs,

v.

JAMES D. WATKINS, as Secretary  
of the U.S. Department of Energy,

and

U.S. DEPARTMENT OF ENERGY,

Defendants.

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CIV-3-92-036

Jordan/Phillips

## COMPLAINT

## INTRODUCTION

1. This is a citizen's suit, brought under Section 505 of the Federal Water Pollution Control Act (hereafter "the Act"), as amended, 33 U.S.C. 1365, for the repeated violations by defendant U.S. Department of Energy (hereafter "DOE") of the terms and conditions of its National Pollutant Discharge Elimination System (hereafter "NPDES") permit number TN0002950 for its K-25 facility in Roane County, Tennessee (hereafter the "K-25 facility"), its

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NPDES permit number TN0002941 for its X-10 facility in Roane and Anderson Counties, Tennessee (hereafter the "X-10 facility"), and NPDES permit number TN0002968 for its Y-12 facility located in Oak Ridge, Anderson County, Tennessee (hereafter the "Y-12 facility") which constitute violations of Sections 301(a), 308(a) and 402 of the Act, 33 U.S.C. 1311(a), 1318(a) and 1342. Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties and the award of costs, including attorneys' and expert witness' fees, for DOE's violations of the terms and conditions of its permits, including, but not limited to, the discharge limitations and the monitoring and reporting requirements.

#### JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under Section 505(a) of the Act, 33 U.S.C. 1365(a).

3. On October 21, 1991, plaintiff Friends of the Earth, Inc. (hereafter "FOE") gave notice of the violations and its intent to file suit to the Administrator of the United States Environmental Protection Agency (hereafter "EPA"), to the Tennessee Department of Environment and Conservation (hereafter "TDEC"), and to defendants, as required by Section 505(b)(1)(A) of the Act, 33 U.S.C. 1365(b)(1)(A). A copy of this notice is attached as Appendix A.

4. More than 60 days have passed since notice was served and, to the best of our knowledge, neither EPA nor TDEC commenced and is diligently prosecuting a civil or criminal action to

redress the violations. In addition, to the best of our knowledge, neither EPA nor TDEC commenced an administrative civil penalty action under Section 309(g)(6) of the Act, 33 U.S.C. 1319(g)(6), to redress the violations prior to the issuance of the October 21, 1991, notice letter.

5. Venue is appropriate in the Eastern District of Tennessee pursuant to Section 505(c)(1) of the Act, 33 U.S.C. 1365(c)(1), because the violations complained of occurred within this District.

#### PARTIES

##### Plaintiffs

6. Plaintiff Friends of the Earth, Inc. sues on behalf of itself and its members. FOE is a not-for-profit corporation organized under the laws of the State of New York, with its principal place of business in Washington, D.C. FOE is a membership organization with approximately 40,000 members residing in all states of the United States. FOE is dedicated to the protection and enhancement of the natural resources of this country including air, water and land. More specifically, on the basis of its research on compliance with water pollution control laws, FOE reports to its members about the level of water pollution law violations and FOE's enforcement efforts; proposes legislation to amend the Federal Water Pollution Control Act; and brings litigation against dischargers of pollutants into waters which violate their NPDES permits. FOE's members are greatly concerned about water quality and FOE has a long history of

involvement in clean water activities on both the local and national levels. The interests of FOE and its members have been, are being, and will be adversely affected by DOE's violations of the terms and conditions of DOE's NPDES permits numbers TN0002950, TN0002941, and TN0002968.

7. Members of FOE reside in the vicinity of, or own property or recreate in, on or near the waters of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally-related waters affected by the discharge of pollutants pursuant to DOE's NPDES permits numbers TN0002950, TN0002941, and TN0002968. The quality of the waters of the State of Tennessee, especially the portions of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally related waters affected by the discharge from the K-25 facility, the X-10 facility, and the Y-12 facility, directly affects the health, economic, recreational, aesthetic and environmental interests of FOE's members. DOE's discharge of pollutants in violation of its NPDES permits numbers TN0002950, TN0002941, and TN0002968 has adversely affected, is adversely affecting, and will continue to adversely affect, the health, economic, recreational, aesthetic and environmental interests of FOE's members.

8. FOE's ability to protect and improve the nation's waters requires accurate and complete information regarding the discharge of pollutants. DOE's actions in failing to monitor and

report properly discharges from the K-25 facility, X-10 facility, and Y-12 facility in violation of its permits have interfered with efforts of FOE to research the compliance status of dischargers with water pollution control laws and report the results of that research to FOE members; propose legislation to amend the Federal Water Pollution Control Act; and bring litigation against DOE to prevent violations of the effluent limitations in DOE's permits and thereby protect the waters of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally related waters affected by the facilities' discharge. The interests of FOE have been, are being and will be adversely affected by DOE's violation of the terms and conditions of its NPDES permits numbers TN0002950, TN0002941, and TN0002968.

9. DOE's actions in failing to monitor and report properly in violation of its permits numbers TN0002950, TN0002941, and TN0002968 have interfered with efforts of FOE's members to protect their health, economic, recreational, aesthetic and environmental interests by interfering with their ability to take action on their own behalf. DOE's actions have further interfered with FOE's efforts on behalf of its members to research the status of compliance of dischargers with water pollution control laws and report the results of that research to FOE members; propose legislation to amend the Federal Water Pollution Control Act; and bring litigation against DOE to prevent violations of the effluent limitations in DOE's permits

and thereby protect the waters of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally related waters affected by the facilities' discharge. DOE's violations of the monitoring and reporting requirements of terms and conditions of its NPDES permit numbers TN0002950, TN0002941, and TN0002968 have adversely affected, are adversely affecting, and will continue to adversely affect the health, economic, recreational, aesthetic and environmental interests of FOE and its members.

10. Plaintiff Deap R. Reed, who is a member of plaintiff Friends of the Earth, Inc., also sues on behalf of himself. Mr. Reed is a resident of the State of Tennessee, residing at 308 Sutters Mill Lane, Knoxville, Tennessee 37909. Mr. Reed is concerned about water quality in Tennessee, including the water quality of the Clinch River. The interests of Mr. Reed have been, are being, and will be adversely affected by DOE's violations of the terms and conditions of its permits.

11. Mr. Reed enjoys hiking and fishing along the Clinch River and tidally-related waters affected by the discharge of pollutants pursuant to DOE's NPDES permits numbers TN0002950, TN0002941, and TN0002968. The quality of the waters of the State of Tennessee, especially the portions of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally related waters affected by the discharge from the K-25 facility, the X-10 facility, and the Y-12 facility, directly affects the economic, recreational,

aesthetic and environmental interests of Mr. Reed and his family. DOE's discharge of pollutants in violation of its NPDES permits numbers TN0002950, TN0002941, and TN0002968 has adversely affected, is adversely affecting, and will continue adversely to affect, the health, economic, recreational, aesthetic and environmental interests of Mr. Reed and his family.

12. DOE's actions in failing to monitor and report properly in violation of its permits numbers TN0002950, TN0002941, and TN0002968 have interfered with Mr. Reed's efforts to protect his health, economic, recreational, aesthetic and environmental interests by interfering with his ability to take action on his own behalf. DOE's actions have further interfered with FOE's efforts on behalf of Mr. Reed to research the status of compliance of dischargers with water pollution control laws and report the results of that research to FOE members; propose legislation to amend the Federal Water Pollution Control Act; and bring litigation against DOE to prevent violations of the effluent limitations in DOE's permits and thereby protect the waters of White Oak Creek, Melton Branch, Fifth Creek, First Creek, Bearden Creek, Poplar Creek, Bear Creek, the Clinch River, and tidally related waters affected by the facilities' discharge. DOE's violations of the monitoring and reporting requirements of terms and conditions of its NPDES permit numbers TN0002950, TN0002941, and TN0002968 have adversely affected, are adversely affecting, and will continue adversely to affect the health,

economic, recreational, aesthetic and environmental interests of Mr. Reed and his family.

#### Defendants

13. Defendant James D. Watkins is the Secretary of the defendant U.S. Department of Energy. Defendant U.S. Department of Energy is an agency of the federal government which operates the K-25 facility, X-10 facility, and Y-12 facility in Roane and Anderson Counties, Tennessee. Defendant Watkins is being sued in his official capacity.

#### FACTS

14. The Administrator of EPA authorized TDEC's predecessor agency, the Tennessee Department of Health and Environment, pursuant to Section 402(a)-(b) of the Act, 33 U.S.C. 1342(a)-(b), to issue NPDES permits on December 28, 1977, and to regulate federal facilities on September 30, 1986. The applicable Tennessee law is the Tennessee Water Pollution Control Act of 1977, Tenn. Code Ann. Sec. 69-3-101, et seq.

15. Pursuant to Section 402 of the Act, 33 U.S.C. 1342, et seq., EPA issued NPDES permit number TN0002950 to the Department of Energy for its K-25 facility on February 24, 1984, to be effective from February 27, 1984 through February 27, 1989. This permit was a renewal of prior NPDES permits which had been in effect since at least 1980. On September 11, 1986, EPA modified this permit. The permit, both as originally issued and as modified, authorizes DOE to discharge limited quantities of pollutants from its K-25 facility into an unnamed tributary to



Poplar Creek, Poplar Creek itself, and the Clinch River. Poplar Creek is a tributary of the Clinch River. The Clinch River and its tributaries are navigable waters of the United States. The Clinch River discharges into the Tennessee River. Pursuant to 40 C.F.R. 122.6, the terms of an expired EPA-issued permit remain in effect until the effective date of a new permit.

16. Pursuant to Section 402 of the Act, 33 U.S.C. 1342, et seq., EPA issued NPDES permit number TN0002941 to the Department of Energy for its X-10 facility on February 27, 1986, to be effective from April 1, 1986 through March 31, 1991. This permit was a renewal of prior NPDES permits which had been in effect since at least 1980. The permit authorizes DOE to discharge limited quantities of pollutants from its X-10 facility into White Oak Creek, Melton Branch, Fifth Creek, First Creek, and Bearden Creek, which are tributaries of the Clinch River, and the Clinch River itself. The Clinch River and its tributaries are navigable waters of the United States. The Clinch River discharges into the Tennessee River. Pursuant to 40 C.F.R. 122.6, the terms of an expired EPA-issued permit remain in effect until the effective date of a new permit.

17. Pursuant to Section 402 of the Act, 33 U.S.C. 1342, et seq., EPA issued NPDES permit number TN0002968 to the Department of Energy for its Y-12 facility on May 24, 1985, to be effective from May 24, 1985 through May 23, 1990. This permit was a renewal of prior NPDES permits which had been in effect since at least 1980. The permit authorizes DOE to discharge limited

quantities of pollutants from its Y-12 facility into the East Fork of Poplar Creek and Bear Creek, which are tributaries of the Clinch River, and the Clinch River itself. The Clinch River and its tributaries are navigable waters of the United States. The Clinch River discharges into the Tennessee River. Pursuant to 40 C.F.R. 122.6, the terms of an expired EPA-issued permit remain in effect until the effective date of a new permit.

18. Section 308 of the Act, 33 U.S.C. 1318, authorizes the Administrator to require NPDES permittees to establish and maintain records, install, use and maintain monitoring equipment, sample effluents, and report on a regular basis to the permit-issuing agency regarding DOE's facilities' discharge of pollutants. The reports consist of discharge monitoring reports (DMRs) and noncompliance reports (NCRs).

19. DOE has submitted DMRs and NCRs for its K-25 facility since at least 1984. DOE has submitted DMRs and NCRs for its X-10 facility since at least 1985. DOE has submitted DMRs and NCRs for its Y-12 facility since at least 1986. Appendix A, plaintiff Friends of the Earth's Notice of Intent to Sue, and Appendix B, plaintiffs' revised lists of effluent violations, contain lists of numerous violations of the permit limitations which have been taken directly from the DMRs and NCRs submitted by DOE pursuant to NPDES permits numbers TN0002950, TN0002941, and TN0002968. Appendix A and Appendix B are incorporated herein by reference.

20. DOE's violations of the Act have been numerous and repeated. Over the 30-month period covered by Appendix B, DOE violated the terms and conditions of its permit for the K-25 facility at least 122 times. Over the 30-month period covered by Appendix B, DOE violated the terms and conditions of its permit for the X-10 facility at least 510 times. Over the 28-month period covered by Appendix B, DOE violated the terms and conditions of its permit for the Y-12 facility at least 183 times. Thus, DOE has violated its permits for its Oak Ridge facilities at least 815 times since January 1989. Because of this extensive history of violations of the terms and conditions of NPDES permits numbers TN0002950, TN0002941, and TN0002968, plaintiffs believe and allege that DOE has violated its permits on additional occasions prior to, during, and subsequent to the period of violations listed in Appendix B and continues to be in violation of the Act.

21. Because of this extensive history of violations of the effluent standards and limitations imposed by DOE's NPDES permits numbers TN0002950, TN0002941, and TN0002968, plaintiffs believe and allege that, without the imposition of appropriate civil penalties and issuance of an injunction, DOE will continue to violate its permits to the further injury of plaintiff Friends of the Earth, Inc. and its members, plaintiff Dean R. Reed, and other members of the public.

#### CLAIM

22. Section 301(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless in compliance with various enumerated sections of the Act. Section 301(a) prohibits, inter alia, such discharges not authorized by, or in violation of, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. 1342. Section 402(k) provides that compliance with the terms and conditions of a permit issued pursuant to that section shall be deemed compliance with, inter alia, Section 301 of the Act.

23. Pursuant to Sections 308 and 402 of the Federal Water Pollution Control Act, 33 U.S.C. 1318 and 1342, DOE's NPDES permits numbers TN0002950, TN0002941, and TN0002968 require it to monitor its facilities' discharges and to report monitoring and sampling information regarding its discharges.

24. Sections 305(a) and 305(f)(6) of the Federal Water Pollution Control Act, 33 U.S.C. 1365(a) and 1365(f)(6), authorize citizens to enforce "a permit or condition thereof," including the effluent limitations and monitoring and reporting requirements of an NPDES permit.

25. DOE has failed in numerous instances including, but not limited to, those listed in Appendix B to this Complaint to comply with NPDES permits numbers TN0002950, TN0002941, and TN0002968, including failures to comply with the effluent limitations and to monitor and report its discharges properly.

As a result, it has violated Sections 301, 308 and 402 of the Act, 33 U.S.C. 1311, 1318 and 1342.

RELIEF

Wherefore, plaintiffs respectfully request this Court to grant the following relief:

A. Issue a declaratory judgment that DOE has violated, and continues to be in violation of, Sections 301, 308 and 402 of the Federal Water Pollution Control Act, 33 U.S.C. 1311, 1318 and 1342 for each of its three facilities;

B. Enjoin DOE from operating its K-25 facility in such a manner as will result in the further violation of DOE's NPDES permit number TN0002950 and Section 301 of the Act, 33 U.S.C. 1311;

C. Enjoin DOE from operating its X-10 facility in such a manner as will result in the further violation of NPDES permit number TN0002941 and Section 301 of the Act, 33 U.S.C. 1311;

D. Enjoin DOE from operating its Y-12 facility in such a manner as will result in the further violation of NPDES permit number TN0002968 and Section 301 of the Act, 33 U.S.C. 1311;

E. Order DOE to comply with all effluent limitations, monitoring requirements, and other terms and conditions of NPDES permits numbers TN0002950, TN0002941, and TN0002968;

F. Order such other injunctive relief as the Court deems appropriate, including restitution and mitigation;

G. Order DOE to provide plaintiffs, for the period beginning on the date of the Court's order and running for one

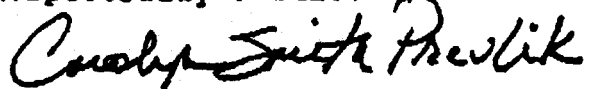
year after DOE achieves compliance with all of the terms and conditions of NPDES permits numbers TN0002950, TN0002941, and TN0002968, with a copy of all monitoring results, reports and other documents which DOE submits to the federal or state government regarding NPDES permits numbers TN0002950, TN0002941, and TN0002968 at the time they are submitted to these authorities and all monitoring results which are not submitted to the federal or state government within 30 days of their receipt by DOE;

H. Order DOE to pay appropriate civil penalties for each violation of NPDES permits numbers TN0002950, TN0002941, and TN0002968 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. 1319(d) and 1365(a), including those listed in Appendix B and violations committed in addition to those listed in Appendix B;

I. Award plaintiffs its costs, including reasonable attorneys' and expert witness' fees, as authorized by Section 505(d) of the Act, 33 U.S.C. 1365(d); and

J. Award such other relief as this Court deems appropriate.

Respectfully submitted,



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January 15, 1992